

HCDTMAIS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

16 CR 522 (RJS)

5 PASQUALE MAIORINO,

6 Defendant.

7 -----x

8 New York, N.Y.
9 December 13, 2017
10:00 a.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,

12 District Judge

13
14 APPEARANCES

15 JOON H. KIM
16 Acting United States Attorney for the
17 Southern District of New York

AMANDA KRAMER
Assistant United States Attorney

18 CHARLES CARNESI
19 Attorney for Defendant
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(In open court, case called)

THE COURT: Good morning. We're here for sentencing.
Let me take appearances for the government.

MS. KRAMER: Good morning, your Honor, Amanda Kramer
for the government.

THE COURT: Ms. Kramer, good morning. And for the
defendant?

MR. CARNESI: Good morning, your Honor, Charles
Carnesi appearing for Mr. Maiorino.

THE COURT: Yes, Mr. Carnesi.

Good morning, Mr. Maiorino.

THE DEFENDANT: Good morning, your Honor.

THE COURT: So good morning to you, and we have some
family and friends here as well?

MR. CARNESI: Yes.

THE COURT: So welcome. This is a public courtroom,
so everybody is welcome here, but I'm sure your presence means
a great deal to Mr. Maiorino. Some of you wrote me letters,
I'm sure, some of you at least, so thank you for doing that.
Letters like yours are important. They give me a lot of
information that I wouldn't otherwise already have about a
person who I've met a couple of times but only in a very sort
of artificial setting, so to get letters from people who know
him better is helpful. So thanks for doing that.

As I said, we're here for sentencing. So Mr. Maiorino

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1 pled guilty before me on May 17, so I want to go over with you
2 now everything that I reviewed and received in connection with
3 sentencing. If I left anything out, let me know.

4 So I have, first of all, the transcript of the guilty
5 plea that took place on May 17. I was here, but I think it's a
6 good practice to go back and review what was said, so I have
7 done that. I reviewed the transcript of the proceeding we had
8 on August 1st. That was a bail proceeding that resulted in
9 Mr. Maiorino being bailed for purposes of getting some dental
10 treatment, so I reviewed that as well.

11 I reviewed the presentence report that was prepared on
12 August 11. That report is 32 pages long. It includes a
13 sentencing recommendation from the probation office. I
14 reviewed a number of submissions related to Mr. Maiorino's
15 dental work, so there was an August 30 letter that attached an
16 August 27 letter from his dentist with photos of things. I
17 also received a September 1st letter from the government
18 related to the same, another September 1st letter from
19 Mr. Carnesi really more about scheduling than anything else,
20 but then I got a September 27 update from Mr. Maiorino's
21 dentist, and then on November 27 an update from the dentist as
22 well.

23 I have the sentencing submission from Mr. Carnesi,
24 which is dated November 29. That is a two-page submission that
25 then attaches a number of letters, including a letter from

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1 Mr. Maiorino himself and various friends and family members,
2 including, I'm sure, some whom of here today. So I read all
3 those.

4 I then have the government's sentencing memorandum
5 which is dated December 7, and that includes -- well, that is a
6 four-page, single-spaced letter, and there was also a consent
7 money order of forfeiture which was entered on May 17, the same
8 time as the guilty plea, and that calls for Mr. Maiorino to
9 forfeit \$10,000 in substitute assets, which were the proceeds
10 of the crime charged in the indictment.

11 So is there anything else that I overlooked?

12 MS. KRAMER: No, your Honor.

13 MR. CARNESI: No, your Honor.

14 THE COURT: Okay. So let's start with the presentence
15 report. Mr. Carnesi, you received a copy of the report and
16 reviewed it with your client?

17 MR. CARNESI: Yes, we did.

18 THE COURT: Do you have any objections to what is in
19 the report?

20 MR. CARNESI: No, your Honor.

21 THE COURT: Ms. Kramer, do you have any objections to
22 what is in the presentence report?

23 MS. KRAMER: No, your Honor.

24 THE COURT: So Mr. Maiorino, you may remember on the
25 day you pled guilty I told you that there were certain factors

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1 that a judge has to consider in deciding what is an appropriate
2 sentence. Do you recall that?

3 THE DEFENDANT: I do, your Honor.

4 THE COURT: Were any of you folks here that day back
5 on May 17, some of you? Many not, some perhaps.

6 Anyway, I'm going to remind Mr. Maiorino what we
7 talked about, and if you were here I guess you'll be reminded,
8 too; and if you weren't, you'll hear for the first time what
9 we're talking about. I think it's important that you
10 understand what is going on if you care enough to be here, and
11 obviously you're affected by the sentence, too, I think it's
12 important that this process be one that you could understand
13 what is going on.

14 So I will try to make sure that we all speak clearly
15 and loudly and not using jargon that makes this hard to follow.
16 Because this is a public event, it's on the record, and you get
17 a transcript, anybody can walk in, and it's important that we
18 make this proceeding understandable, particularly for people
19 who will be affected by it, some who are here and some who may
20 not be here but will certainly be affected by it.

21 So one of the things we talked about, Mr. Maiorino,
22 was the sentencing guidelines. Do you recall that?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: And so I think held up a big book, and
25 this is the sentencing guidelines, it's a manual, it's about

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1 600 pages long, it's put out by a commission. The commission
2 is the United States Sentencing Commission. It includes some
3 judges, some lawyers, and some experts in the field of criminal
4 law. And the way it works is this book is designed to give
5 guidance to judges like me who have the responsibility to
6 impose sentences on human beings.

7 And so the way it works is that every crime or type of
8 crime is covered by a chapter in this book, and the judge,
9 before sentencing, is directed to go to the chapter that
10 relates to the crime involved in the case, and once in that
11 chapter, the judge is prompted to make certain findings of
12 fact, and based on those findings, the judge assigns points.
13 And it's sort of like accounting in some ways, it's fairly
14 technical. But it's a process designed to be transparent and
15 to be predictable. And so that's what it is. Its mathematical
16 precision perhaps is overstated, but nonetheless, the judge
17 makes certain findings, assigns points, adds points, in some
18 cases subtracts points, and the judge comes up with a number,
19 and that number is the offense level.

20 The judge then goes to another chapter in this book
21 and that's the chapter that relates to criminal history. And
22 not surprisingly, people who have been convicted of crimes
23 before and people who have a been sent to prison for those
24 crimes before, they will typically be treated more harshly than
25 a person with no prior convictions. So the judge goes to

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1 chapter on criminal history, the judge makes findings about
2 whether there were prior convictions; and if so, when they
3 were, how long the sentence was. And depending on the answers
4 to those questions, the judge assigns points.

5 The judge then comes up with another number, and that
6 numbers number is referred to as the criminal history category.
7 There are six criminal history categories. Category one is the
8 lowest and least serious, category six is the highest and most
9 serious. And then with those two numbers that I talked about,
10 the offense level on the one hand and the criminal history
11 category on the other, the judge goes to the back of this book
12 where there's a table or a grid. You probably can't see it,
13 but it's a chart, basically.

14 There's a column here on the far left, that's the
15 offense level column, it's numbered one through 43. The judge
16 goes down that column until he or she gets to the number that
17 the judge found to be the offense level. The judge then goes
18 across the other columns from left to right, each of which
19 reflects a criminal history category. And the judge keeps
20 going until he gets to the criminal history category that the
21 judge found to be appropriate. So once the judge's finger
22 finally stops in this chart, well, that is the range that, in
23 the view of the commission that prepares this book, would be
24 appropriate, and it's set forth in terms of months.

25 Now I don't have to follow this book. I'm free to

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1 sentence above or below the range that's in this book. But I
2 do have to consider this book and I have to make my findings
3 under the book and announce the range. So sort of the starting
4 point for sentencing is this book. So we'll spend a few
5 minutes talking about this book and how it applies in this
6 case.

7 There are other factors just as important as this
8 book, we'll talk about those in a minute, but the book is
9 important. So we'll chat about that.

10 Any questions so far, Mr. Maiorino?

11 THE DEFENDANT: No, sir.

12 THE COURT: So according to the presentence report,
13 and no one seems to object to it, so I think everybody is in
14 agreement, the base is offense level for this crime is level
15 18, so that's pursuant to Section 2B3.2A of the sentencing
16 guidelines. So base offense level of 18, plus two more levels
17 because the offense involved an express or implied threat of
18 death, bodily injury or kidnapping, that's a two level increase
19 pursuant to 2B3.2B1. There's then an additional one-level
20 enhancement because the amount of money that was demanded as
21 part of this extortion was more than \$20,000 but less than
22 \$95,000. So that results in a one-level increase pursuant to
23 2B3.2B2 and 2B3.1B7B. So that takes us to a grand total of 21.

24 Now because Mr. Maiorino pled guilty before trial,
25 because he accepted responsibility for this crime, he's

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1 entitled to a reduction. Under the guidelines if you plead
2 guilty, if you accept responsibility, I subtract some points.
3 So in this case I will subtract three points pursuant to
4 Section 3E1.1. So that puts us down to level 18.

5 Now in this case the parties agreed as part of the
6 plea agreement that if Mr. Maiorino and 37 other defendants all
7 pled guilty by a certain deadline in May, if they all did that,
8 the government agreed they would recommend that the Court
9 reduce the another level from the offense level, and the
10 defendant agreed. It turned out that all 37 or 38 defendants
11 did plead guilty by that deadline, so the government has made
12 that recommendation.

13 Now I'm not bound by that. I wasn't part of the plea
14 agreement, I didn't negotiate it, so I don't have to go along
15 with it. But it seems to me that in this case it makes sense
16 to do that. This was a case with 46 defendants. It would have
17 been very labor intensive and resource intensive to try all 46
18 defendants, or even half that number would be a lot. So to get
19 the vast majority to plead guilty pursuant to plea agreements,
20 certainly did have a benefit of preserving resources and
21 streamlining a process that could have been very complicated.
22 So I think a one-level reduction is appropriate in light of
23 that savings of resources and in light of the efficiencies that
24 resulted. So if it had been more than that -- I probably
25 wouldn't have agreed to more than that, but one level strikes

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1 me as appropriate. I will reduce an extra level, and that puts
2 you at level 17.

3 Now with respect to criminal history, there is an
4 unfortunate criminal here. So Mr. Maiorino has a number of
5 convictions. The first was from 1978 when he was just a kid,
6 and that was trespassing in the Bronx, resulted in a sentence
7 of 15 days or \$50 fine, looks like he paid the fine. It's too
8 old and too insignificant, it doesn't count.

9 A couple of years later -- the arrest was 1979, the
10 conviction was 1981, Mr. Maiorino was convicted of manslaughter
11 in the first degree and assault in the first degree, which
12 resulted in -- I'm a little confused about this one. It says
13 it resulted in a sentence of six to 18 years imprisonment and
14 then four to twelve years on Count Two. But it looks like
15 Mr. Maiorino spent more than 18 years in prison.

16 I guess I don't need to really resolve that today, but
17 I guess I was confused how he spent more time in prison than
18 the maximum sentence. Were they consecutive?

19 MR. CARNESI: No, Judge. My understanding was that
20 the conviction was actually for murder in the second degree for
21 which he received a 20-year sentence.

22 THE COURT: That's what it said in some of the letters
23 but that's not what it says here in the presentence report, and
24 nobody objected, so that's why I was confused. Again, I don't
25 think it matters for purposes of sentencing guidelines, it's

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1 three points either way, but I was confused by that. And
2 Mr. Maiorino was on parole until 2013 for that crime.

3 In 2015 Mr. Maiorino was arrested and charged with
4 being a felon in possession of firearms in this district, in
5 the Southern District of New York, in front of Judge Marrero, I
6 believe, and was sentenced to 30 months imprisonment, followed
7 by a three-year term of supervised release. So you just
8 completed that term of imprisonment I guess in the summer, but
9 that's another three points under the criminal history section
10 of the guidelines.

11 And then there's an additional two-level enhancement
12 or two point addition because Mr. Maiorino committed the crime
13 charged in this indictment while he was a under criminal
14 justice sentence, which was the parole on the state case. So
15 that's another two points that leads to a total of eight points
16 and puts Mr. Maiorino in criminal history category four.

17 So everybody agree with that?

18 MR. CARNESI: Yes, your Honor.

19 MS. KRAMER: Yes, your Honor.

20 THE COURT: So 17, criminal history category four, is
21 a sentence of 37 to 46 months, so a little over three to a
22 little less than four years, according to this book.

23 Now as I said, I'm free to sentence above or below
24 that. I'm not bound by this book. But there are other factors
25 that I have to consider. And so Mr. Maiorino, you may remember

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1 what some of those were. I'll remind you. First of all, one
2 of those factors I have to consider is your own personal
3 history. So I have to consider not just this book, I have to
4 consider you as a person and your whole experience from your
5 birth right until now, and that includes everything.

6 You're a complicated guy like everybody else, so it
7 includes your childhood, your educational history, your work
8 history, it includes your family circumstances today, it
9 includes your health, it includes the testimonials I received
10 about you, people telling me what kind of person you, all that
11 matters, your generosity and kindness. Those are considered,
12 too, and I have to consider the whole person. I have to tailor
13 this sentence to you as an individual, and so that's an
14 important factor that I have to take into account.

15 I also, of course, have to consider the facts and
16 circumstances of this crime. This is a really serious crime,
17 and so I have to make sure that the sentence I impose reflects
18 the seriousness of the crime. In other words, just as I have
19 to tailor the sentence to you as an individual considering your
20 whole experience, I also have to tailor this sentence to the
21 particulars of this crime, not just what it's called, not just
22 what the numbers are under the book, but what exactly went on
23 here. What did you do, for how long, why did you do this, how
24 much money was involved, what harms were caused, who else was
25 involved, what was their role relative to yours, all of that

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1 matters, and all of that is part of assessing your culpability
2 for this crime and to make sure that the punishment fits the
3 crime and to make sure that the sentence I impose promotes
4 respect for the law. That's another factor I have to consider.

5 Another factor that I have to consider is the need to
6 deter or discourage you and others from committing crimes like
7 this in the future. And this is the hope, that by imposing a
8 sentence on you today I will send a message, a message to you
9 and a message to other people, maybe some in the courtroom here
10 today but probably mostly people who are not in the courtroom
11 but who might be considering whether it makes sense to engage
12 in this kind of conduct. And the hope is that you and they
13 will both say wow, think about what happened to Maiorino, it's
14 not worth it, the penalties are too high, the consequences too
15 grave, it's just not worth it, don't do it. And the hope is
16 there will be less crime as a result. It will affect -- my
17 sentence today will somehow have an impact on future behavior
18 and deter or discourage future crimes. That's hope. I don't
19 have a crystal ball, I can't know for sure what impact my
20 sentence will have on future behavior, but I have to use my
21 best judgment for that. That's one of the things that criminal
22 sentences have been designed to do for thousands of years,
23 really, is to have an impact on future conduct. So that's
24 another factor I have to consider.

25 I have to consider your own needs while you're in

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1 custody. So every defendant that I impose a jail sentence on
2 probably has some needs, some have more particular needs than
3 others, so some have medical needs. But this is a case with 46
4 defendants. I sentenced at least 25 so far. And many of them
5 are in their 70s, one is in his 80s. So some of these folks
6 have very serious medical issues, that if I impose a jail term,
7 those issues have to be addressed because it would be life
8 threatening otherwise.

9 I have a lot of other defendants in other cases who
10 are much younger who don't have those same physical health
11 issues, but they may have mental health treatment needs, or
12 very frequently substance abuse treatment needs. Some,
13 frankly, need opportunities to get educational programs or job
14 training. And so whatever the needs, I have to make sure that
15 those needs are addressed while a person is in prison; the hope
16 being that when they're done with their sentence they will be
17 in a position to succeed, that they won't be worse off, that
18 they might in fact be better off because they have addressed
19 some of the things that may have been holding them back or
20 inducing them to engage in destructive behavior. So that's
21 another factor I have to consider.

22 Finally, the last factor that I have to consider, in
23 addition to all those others, is the need to avoid unwarranted
24 sentencing disparities among similarly situated people. That
25 just means before I impose a sentence on Mr. Maiorino in this

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1 case, I have to take a step back and make sure that the
2 sentence I impose here is consistent with the sentences imposed
3 on other individuals in similar cases, cases involving similar
4 crimes by defendants with similar histories and backgrounds.

5 Now no two people are exactly alike, so it's
6 impossible to say these two guys should be treated exactly the
7 same because they're exactly alike. There are always
8 differences. But where there are real strong similarities,
9 it's important that the sentences should be similar. If
10 sentences were all over the place and some people got clobbered
11 and some people got almost nothing and it depended what judge
12 you had or who the lawyers were or what courthouse you landed
13 in, this one or the one in New Jersey, that would probably be
14 arbitrary and promote disrespect for the law. It would make
15 people wonder what is going on here, it's a roll of the dice.
16 So it's important that we avoid that. We want to make sure
17 that the system is consistent and respected.

18 I have to make sure that the sentence that I impose
19 does justice to each of them, which is sometimes tough, because
20 some of those factors are in tension with each other. Some
21 might argue for a more lenient sentence. He's a good guy, a
22 good father, he's charitable, a hard worker. Others might
23 argue for a harsher sentence. This is your third felony
24 conviction involving other felonies that were really serious,
25 to say the least, and this is a really serious crime.

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1 So there are some tensions here. The hard part is
2 balancing. So we're going to spend a little bit of time
3 talking about that now.

4 What we'll do is I think I'll first hear from the
5 lawyers. I will give Mr. Carnesi an opportunity to make any
6 arguments he thinks are appropriate in light of the different
7 factors or any other arguments he wants to make. I will then
8 give Ms. Kramer an opportunity to respond and to make her own
9 arguments. And after all that, I will give you, Mr. Maiorino,
10 an opportunity to address the Court, if you want. You have
11 already written me quite a lengthy letter. If you want to rely
12 on that, that's fine, but if you would like to say more, you
13 have a right to do that, and you would be very welcome to. So
14 I will give you that opportunity.

15 Now there is a victim in this case. Victims have a
16 right to be heard at sentencing either in person or in writing.

17 So Ms. Kramer, is there any victim statement or
18 anything from the victim in this case?

19 MS. KRAMER: No, your Honor, there is not.

20 THE COURT: All right. Have you communicated to the
21 victim that he had a right to be here and a right to address
22 the Court?

23 MS. KRAMER: I did not personally, your Honor, but I
24 understand that the government did, and that offer was
25 declined.

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1 THE COURT: Okay. So I will, I guess, want to talk a
2 little bit at some point about the victim, because certainly
3 Mr. Maiorino suggests that this is a victim who was not
4 terribly traumatized by this. So anyway, we have a lot to talk
5 about. We're in no hurry. It's an important day for
6 Mr. Maiorino. It's an important day for his family and for
7 friends. So we're going to take the time we need to do this
8 carefully and thoughtfully.

9 So Mr. Carnesi, let me hear from you. Is anything
10 that you would like to say with respect to sentencing?

11 MR. CARNESI: Yes, your Honor. First of all, we would
12 like to thank the Court for giving Mr. Maiorino the opportunity
13 to address his dental problems. I think, as the reports from
14 the dentist have shown, there were very serious problems. He's
15 made great progress in dealing with them, although there is
16 still some work to be done.

17 THE COURT: I'm a little confused actually in sort of
18 what is to be done and how that would work with a prison
19 sentence. In other words, if he were to go back in in a
20 month's time or so, that is going to have an impact on some of
21 the plans. Some of the plans that the doctor laid out in his
22 November 27th report talk about things happening over the next
23 several months, which would be tough to do in the event of a
24 further prison sentence, which I think some prison sentence is
25 clearly going to happen. There are things scheduled for

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1 March 2018 that will require four to six months for integration
2 is what he said, and so I don't know if the doctor has sort of
3 thought this through, what is to be done in the event of a jail
4 term.

5 MR. CARNESI: I believe he has, Judge. But not to get
6 ahead of myself, what we would be requesting, since
7 Mr. Maiorino is presently out on bail, is that he be given a
8 surrender date sometime around the end of March or the very
9 beginning of April. That will allow the doctor to complete the
10 work that he described here.

11 THE COURT: But then I thought he said he needs four
12 to six months for the integration, and I don't know if that
13 requires follow ups and things.

14 MR. CARNESI: I don't believe that it did, Judge. I
15 believe what he's talking about is that from that point on it
16 would be at least four to six months before they could do
17 anything additional. But by the work that he would be able to
18 complete by the end of March or April, although it would still
19 be considered temporary, he expects that that would enable
20 Mr. Maiorino to go forward for the next two years or more
21 without any substantial problems. He would expect that that
22 temporary work, that he would finish by the end of March, would
23 generally preserve his dental health for the next couple of
24 years.

25 THE COURT: Okay.

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1 MR. CARNESI: If there's any other questions, Judge I
2 want to make very clear, the doctor -- the dentist has been
3 more than cooperative. He offered to be present today,
4 although it was a regular office day for him, but he would be
5 more than willing to come to court if the Court feels that it
6 needs any further information from him.

7 THE COURT: I assume you're able to convey on his
8 behalf what the plan is, so I think you have done that.

9 MR. CARNESI: Thank you.

10 Judge, just to follow up on something that you said in
11 terms of considering the specific offense, the specific conduct
12 for which Mr. Maiorino was being sentenced here today, rather
13 than the label that may appear in the sentencing guidelines, we
14 submitted a very brief letter to the Court which I think frames
15 the issue as we would like to present it to the Court. This
16 isn't the standard extortion case. The money that was owed to
17 Mr. Maiorino was owed to him as reimbursement for unfinished
18 work.

19 THE COURT: I get that.

20 MR. CARNESI: Okay.

21 THE COURT: Look, so most extortion relates to illegal
22 proceeds or debts, right, so somebody who has either gambled
23 and lost and is on the hook for money and is getting extorted
24 to repay or somebody who borrowed money at extortionate rates
25 and has fallen behind and now is getting leaned on and

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1 threatened to pay back.

2 MR. CARNESI: Or, in other instances, it could be
3 someone paying protection money to continue to run a business.
4 What I'm trying to say --

5 THE COURT: This is not that, but the same threats are
6 being made.

7 MR. CARNESI: Correct, Judge. And that's the reason
8 why he pled guilty, that's the reason why he recognizes the
9 seriousness of it. And there was no question but that his
10 conduct in allowing people to go and commit these threats on
11 his behalf was criminal, but the money was taken from
12 Mr. Maiorino under false pretense over six years before there
13 was ever any attempt to collect the money. He basically wrote
14 it off, forgot it, wasn't worth it, and just said okay, I have
15 been taken for \$30,000, I'm going to have to live with it, and
16 that's what he did.

17 THE COURT: I guess so, but I mean the government's
18 letter gives a little more detail than what's in the
19 presentence report and certainly what's in your letter about
20 what Mr. Maiorino's role was. And it wasn't that he just let
21 people do this, he spoke to them, he told them what to do and
22 explained -- told them what to explain to the victim, and the
23 language is pretty bad.

24 MR. CARNESI: Without question. And again, that's why
25 it's a criminal case and that's why he pled guilty. But in my

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1 letter, and I think clearly in his plea, he acknowledged that
2 he knew that threats were going to be issued, he acknowledged
3 that he was aware of that and took party to that. But again, I
4 don't think you can lose sight of the fact that the money that
5 was taken was his money and he did nothing to collect it for
6 six years.

7 Subsequent to that, Mr. Rubio, who was acting on
8 behalf of the government, came to him and suggested that he
9 would collect the money along with another individual. And
10 again, there was no question about the means that were going to
11 be used, but it wasn't until six years later that he was
12 approached by Mr. Rubio that he even made an attempt.

13 He made a tremendous error in judgment, there's no
14 doubt about that, but at the time he had some issues with a
15 failing business, and that money which he had virtually written
16 off, suddenly became more significant, and he gave in to the
17 temptation, and that's what he's here for. But he didn't do
18 this on his own. He made no effort to do it up until Mr. Rubio
19 and this other individual approached him.

20 Additionally, Judge -- and I think also this is
21 confirmed in the government's submission, that the whole thing,
22 when Mr. Rubio approached Mr. Maiorino to collect this money,
23 and supposedly had gotten permission from another individual,
24 Mr. Parrello, that was just the case -- it wasn't even the
25 right Patty Boy.

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1 THE COURT: The permission was granted on the basis of
2 a misunderstanding.

3 MR. CARNESI: Yes.

4 THE COURT: But the fact is that Mr. Maiorino stood to
5 benefit from this and he put the wheels in motion, right?

6 MR. CARNESI: No.

7 THE COURT: This is the government's letter, and maybe
8 everybody should know this because it's not maybe readily
9 known. So I guess Mr. Rubio and somebody else goes and visits
10 the victim three. Victim three tells them that he doesn't have
11 the money for Maiorino. Another person owes him money is what
12 he says. And so they then invoke the name of Parrello, and say
13 Parrello says you got to pay, you better pay, and I would
14 advise you very, very, very much not to go against it. And
15 victim three says yeah, I got it, it's like the judge putting
16 fucking guilty 20 years, have a nice life.

17 So when told about that exchange, Mr. Maiorino
18 responded that victim three should have got slapped. And then
19 Mr. Maiorino tells Rubio and the other person that they should
20 put gambling machines or a sports betting clerk in the bar to
21 take bets as a way of making money to repay Mr. Maiorino. So
22 that suggests that he's not just trying to get his money back,
23 that he has a plan to put in slot machines, which are not
24 legal, in the bar, so he has access somehow to those.

25 But then he gives advice to how this ought to happen.

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1 He tells these guys, who are the muscle, that you have to be
2 firm, you have to be assertive. You can't show the fangs but
3 you got to know the fangs are there. You can growl a little
4 bit, and then you say listen to me, you're get yourself into a
5 pickle, you're not going to be able to get out. This is no
6 joke now.

7 And then after that, Mr. Maiorino says that victim
8 three is making me look like an expletive monkey. He then says
9 that later he tells Rubio and the other guy that they better
10 get the victim isolated. And then he asks Rubio and the other
11 guy if they have ever used a zapper or stun gun. He explains
12 that they should, quote, fuck him up, fuck him up, fuck him up
13 bad. If they found him alone they should hold the back of his
14 head and nail his fucking jaw. Come into that fucking bar
15 tomorrow, we're starting it up in there, you don't have a
16 fucking choice here, you're going to pay. We may take the
17 fucking bar from you. I will bring a fucking army tomorrow.
18 That's what is being said.

19 And then he later says, after the victim made a
20 counteroffer of paying \$2,500 a month for a year, Mr. Maiorino
21 said no, not doing that, and then he says I'm a firm believer,
22 use logic and reason, and when all else fails, God hope they
23 have medical insurance. Meaning this guy is going to get
24 beaten up, right?

25 MR. CARNESI: The language is horrible, Judge.

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1 THE COURT: It's pretty bad. It's hard to square with
2 the letters I received. It's hard to square with the
3 testimonials of what a stand-up guy Mr. Maiorino is. This is
4 the talk of a violent man. And when you combine that with a
5 guy who has a prior murder conviction and spent 20 years in
6 jail and then after this is in possession of a firearm, that is
7 a pretty bad picture.

8 So that's the problem you have. The debt may have
9 been legitimate, like a household debt. It was the debt for a
10 contracting job. Lots of people have debts like that. But
11 most people have to go to small claims court or they have to go
12 to court to resolve those things, they don't get to resort to
13 threats and stun guns and force.

14 MR. CARNESI: But that was not -- Judge, the only
15 point I'm trying to make, for whatever significance you may
16 attach to it, is that was not his original reaction. Until the
17 government came to him in the form of Mr. Rubio and suggested
18 that they would go about collecting those debts, he sat back
19 and made no attempt to threaten or intimidate anybody in any
20 way.

21 Circumstances changed over the years since he
22 originally lost that \$30,000. The business failed, that money
23 became more significant, and he admitted he made a very serious
24 mistake for which he has pled guilty and is about to be
25 sentenced. But I do think that those two factors are

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1 significant in how he came to be here before this Court today.

2 With regard to the reference to putting in gambling,
3 the conversation is more than that. The conversation is about
4 Mr. Rubio reporting that Julio says he's not making any money
5 in here, in the bar, he suggested -- he knows Julio is a
6 gambler. He also suggested to them that there's a kitchen in
7 the bar, maybe they can open up the kitchen and generate more
8 money for the bar that way.

9 With regard to his refusal to accept the proffered
10 \$2,500 payments, his rationale was Julio had a history of
11 breaking his financial commitments, and what he wanted to see
12 is rather than trying to get four or five payments of \$2,500
13 before Julio again did not pay, he wanted to see if he could
14 front load them, take 4,000 or 5,000, knowing that Julio was
15 only likely to make few payments. That was his rationale. He
16 wasn't being unreasonable about refusing a good faith offer to
17 make these payments.

18 THE COURT: I had a question about Mr. Maiorino's
19 letter. He says you will read statements from Mr. Julio
20 stating that this debt is not a gambling debt, that he and I
21 were tight, and will describe that we had a relationship. I'm
22 not sure what statements that's referring to.

23 MR. CARNESI: Judge, I think what he anticipated,
24 having gone over all of the discovery, I don't think that's an
25 issue, to be honest with you. I think in the government's

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1 letter they acknowledge how this debt came about. There are
2 tape recordings in which Mr. Julio is saying guys, you
3 understand this is not a gambling debt.

4 THE COURT: That's referring to --

5 MR. CARNESI: To discovery.

6 THE COURT: To the discovery, okay.

7 Go ahead.

8 MR. CARNESI: Judge, essentially that's the thing that
9 I would focus on here, that it is different than the guideline
10 anticipated type of extortion. I do think, not a defense, we
11 never interposed this as a defense, nor would we, it's not
12 entrapment but the reality of it is it was six years, and if
13 the government doesn't go there through Mr. Rubio to suggest
14 this whole thing about trying to collect this debt or whatever,
15 in all likelihood it doesn't happen.

16 And the reason I feel confident in saying that is
17 because it was six years, he made no effort, he never contacted
18 Julio, he never tried to threaten him, he never did anything of
19 the sort. And I also do think, Judge, although, yes, this may
20 happen all too frequently where a contractor takes money and
21 doesn't complete the job, runs away with the money, if it
22 happens to a particular individual, it's very frustrating.

23 THE COURT: I'm sure it happens all the time, I think,
24 but most people don't resort to violence or the threats of
25 violence.

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1 The other question I had is with respect to the
2 firearms conviction which postdates the conduct here.

3 MR. CARNESI: Yes.

4 THE COURT: The sentencing was before this, but the
5 conduct postdates this conduct. There are several intonations
6 in the letters that I received that this is -- the reasons why
7 he had those guns are there were extenuating circumstances for
8 possessing those firearms. I'm not sure that I fully grasp it.
9 It's sort of vague assertions.

10 MR. CARNESI: I can proffer to you what I believe that
11 those individuals are referring to. There were three people in
12 the car that night, one of them was his young godson. He came
13 to be in the car with the gun because he had gotten a call from
14 his godson that he had had problems with some individuals in
15 the area and that he had gotten guns and was going to look to
16 address those problems in some way, or at least at a bare
17 minimum be prepared to protect himself. When he got that call,
18 he was furious about the idea that this kid was in possession
19 of the guns and made arrangements to pick up the kid with the
20 guns, and they were going to toss the guns in the water where
21 they were stopped, where they were parked at the time, to get
22 rid of the guns.

23 Now I would only say to you, Judge, that in terms of
24 any skepticism of anyone who may have about this particular
25 explanation for how that came to be, that the night -- as soon

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1 as they were arrested, the godson and Mr. Maiorino both made
2 statements, separately interviewed, explaining that those were
3 the circumstances. Ultimately, Mr. Maiorino pled guilty
4 because he knew that it was wrong for him to be in the car
5 knowing that there were guns in the car. The case against the
6 godson was dismissed in the Bronx State Court on speedy trial
7 basis.

8 THE COURT: He had no priors?

9 MR. CARNESI: Yes, he had no priors. That is my
10 understanding. I didn't represent him, but my understanding is
11 he had no priors.

12 And again, he was furious, Mr. Maiorino was, with the
13 idea, because he understood where that led him, and he didn't
14 want to see his godson going down the same path.

15 THE COURT: And this was argued to Judge Marrero?

16 MR. CARNESI: No, Judge, it wasn't, because as a fact
17 he knew that there were guns in the car, he put himself in that
18 car, and he was legally in possession of those guns.

19 THE COURT: Well, that's true, but that would still be
20 an extenuating fact, don't you think, if the goal was to
21 dispose of them?

22 MR. CARNESI: If I were representing him at the time,
23 Judge, I may have, but I did not represent him in that case.

24 THE COURT: I didn't see any argument like that in the
25 sentencing before Judge Marrero. Maybe the government, are you

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1 aware of any discussion of that? Are you aware of those facts?

2 MS. KRAMER: Your Honor, I'm not.

3 THE COURT: Okay.

4 MR. CARNESI: I can tell you, Judge, I did see the
5 police reports, and they reflected the statements I just
6 represented.

7 THE COURT: All right. Anything else you would like
8 to say, Mr. Carnesi?

9 MR. CARNESI: I think that's it, Judge, thank you.

10 THE COURT: All right. Ms. Kramer, anything you would
11 like to say?

12 MS. KRAMER: Yes, thank you, your Honor. First, on
13 just some logistical matters that were raised at the outset of
14 Mr. Carnesi's comments, the government would not object to a
15 surrender date at the end of March or early April. That was
16 something that we contemplated when opposing the request to
17 adjourn this sentencing until the dental work was completed.

18 And one of the government's arguments to your Honor
19 was that we could move forward with the sentencing, and if
20 there is a little extra time that is needed for surrender to
21 accommodate additional procedures, then that could be
22 considered by the Court. We would object to anything past that
23 point, but if we're talking about two extra months to allow a
24 procedure, that's not something that the government would
25 object to.

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1 THE COURT: Saying the end of March, are you okay with
2 that?

3 MS. KRAMER: I think so, your Honor, given that the
4 Court allowed Mr. Maiorino to be out on bail to attend to these
5 procedures over the government's objection. In that time
6 period he reportedly is in compliance with all of the
7 requirements that are on him, understanding that he is facing
8 significant time. And so without any reason to question the
9 statements of his dental providers that this additional
10 procedure is necessary that is scheduled for March, the
11 government doesn't object to having that done.

12 THE COURT: All right.

13 MS. KRAMER: There is no dispute that this debt was
14 not criminal in nature, that it was incurred sometime in the
15 past in connection with work done on the defendant's home.

16 THE COURT: Does that make a difference? That's the
17 question. Mr. Carnesi is suggesting -- more than suggesting,
18 he's arguing that the fact that this was a legitimate debt,
19 that Mr. Maiorino did nothing to collect -- did nothing
20 illegally to collect until your informant sort of pitched the
21 idea is something that should be relevant to sentencing.

22 MS. KRAMER: So I don't think so, your Honor, and
23 here's why: If there were a basis to argue actual entrapment,
24 which I understand the defendant is not doing, but he would
25 have to establish that he did not hold himself out as open to

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1 committing the crime of extortion. The fact that they're not
2 alleging entrapment I think speaks volumes about this
3 defendant's position.

4 THE COURT: Legal entrapment is hard to prove, it's
5 affirmative defense and it's difficult. I don't know that
6 there's enough here to prove entrapment. But I guess this
7 should be not the legal defense of entrapment but rather an
8 argument that it makes Mr. Maiorino less culpable than your
9 typical garden variety defendant charged with and convicted on
10 extortion.

11 MS. KRAMER: That would be true, your Honor, in the
12 government's view, if there were resistance on the part of the
13 defendant and he relented after some additional prodding.
14 That's not what seems to have happened here. He seems to have
15 responded with enthusiasm, if you will, and vigorously
16 participated in this extortion.

17 The fact that the underlying debt was not criminal in
18 nature doesn't affect, in the government's view, the
19 defendant's culpability, because the crime is in the collection
20 of the debt. So legitimate or illegitimate, I think the
21 conduct that is relevant is what the defendant said and what
22 the defendant did in collecting the debt.

23 Now it is true, as defense counsel suggests, that the
24 victim was close or friendly with the defendant in this case.
25 The victim took the threats seriously, but has not expressed to

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1 the government the -- as your Honor raised, whether he was
2 traumatized, he has not expressed that he was traumatized, and
3 essentially describes himself as a tough guy.

4 So he took the threats seriously, not surprisingly, I
5 think, given --

6 THE COURT: Well, he took the threats seriously, but
7 he didn't do what they asked him to do, he neither put in the
8 machines nor paid the money, right?

9 MS. KRAMER: That's true, your Honor.

10 THE COURT: So that's not a defense either, but --

11 MS. KRAMER: That's true.

12 THE COURT: -- seems to be a relevant fact.

13 MS. KRAMER: It's relevant, your Honor, because
14 obviously the harm that was caused by the crime is something
15 that the Court should consider. But the fact that there was in
16 a way the inverse of the eggshell plaintiff here, an especially
17 tough extortion victim, again doesn't undermine the seriousness
18 of the defendant's own words and the defendant's own actions.

19 I think that the recordings speak for themselves, and
20 the defendant's conduct does show a very concerning level of
21 comfort with violence and with encouraging acts of violence in
22 a way that requires a guidelines sentence to appropriately
23 address the seriousness of the offense and to effect general
24 deterrence as well as specific deterrence.

25 THE COURT: All right. I guess another question

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1 that's worth considering is had Mr. Maiorino been charged and
2 prosecuted of this offense and the weapon offense at the same
3 time, which could have happened, what would that sentence have
4 looked like? Have you thought about that?

5 MS. KRAMER: I have, your Honor. I don't actually
6 think that -- because of the gap in time between the two
7 offenses, I don't think that would look like one sentence as
8 those the guns were possessed during the extortion.

9 THE COURT: They would be separate crimes, but if they
10 were charged at the same time and sentenced at the same time,
11 the guidelines -- I guess there would be a grouping analysis, I
12 presume. Do you agree with that?

13 MS. KRAMER: There would be a grouping analysis. It's
14 an interesting question, your Honor, because I think that the
15 sentence that the defendant received in connection with the gun
16 case is --

17 THE COURT: He got 30 months.

18 MS. KRAMER: Yes, your Honor.

19 In some ways that is addressed in this case by virtue
20 of the criminal history points that were added in, because it
21 does make him a more serious recidivist defendant. I think the
22 Court would consider that and factor that in even if were
23 calculated differently under the guidelines.

24 THE COURT: This conduct happened before that offense.

25 MS. KRAMER: Right.

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1 THE COURT: If this happened after that offense but he
2 was charged and prosecuted at the same time, then you would
3 argue that the recidivism is probably worse.

4 MS. KRAMER: Well, I think either way you have someone
5 who engaged in extortion in 2012 and then was possessing
6 firearms as a convicted felon.

7 THE COURT: Right. But the possession of firearms,
8 according to him -- and I'm looking now at the submissions, I
9 couldn't get the transcript, but the submissions do reflect
10 that -- whether true or no, I'm not sure, but Mr. Maiorino and
11 his godson both said Maiorino was there just to help dispose
12 them, to get rid of them; not to use them, not to keep them, to
13 throw them in the water so they would never be seen again. I
14 don't know if that's true or not, but that's what the
15 consistent explanation was. That's not your typical felon in
16 possession case either.

17 Judge Marrero sentenced him to 30 months. The
18 guidelines range was 33 to 41, I think, so he mustn't have been
19 too moved, but I'm just curious as to what the guidelines you
20 think would have been had he been sentenced at the same time.

21 MS. KRAMER: I haven't done the calculation, your
22 Honor, but I think that in that circumstance the government
23 would be arguing that the defendant's criminal history,
24 although not yet captured by virtue of the two crimes being
25 charged together although disparate in time, should affect the

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1 Court's sentencing in terms of severity so that the Court does
2 take into account that he has continued to engage in very
3 serious crimes.

4 THE COURT: I agree with that. I'm just saying that
5 even now there are two full sentences; whether he was sentenced
6 at the same time, even if you discounted or added, I suppose,
7 the extra risk of recidivism that's reflected in the additional
8 criminal history would have been a combined probably lower
9 sentence.

10 MS. KRAMER: Your Honor, if I may, my understanding
11 from one of my colleagues who was on that felon in possession
12 case is that the guns were not in the trunk.

13 THE COURT: I don't think they were in the trunk.

14 MS. KRAMER: They were not sort of separate in the car
15 in a way that they were not accessible, so --

16 THE COURT: They were accessible. They are in the
17 passenger compartment of the car. They were where the godson
18 had been sitting.

19 MS. KRAMER: Yes, and there were also robber's tools
20 in the car.

21 THE COURT: And it was Mr. Maiorino's car?

22 MS. KRAMER: I believe that's true, your Honor, but I
23 don't know.

24 THE COURT: That's what the presentence report said
25 that wasn't objected to then.

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1 MS. KRAMER: So I just think the context calls into
2 the question the notion of what was being done with the guns at
3 the time, notwithstanding the fact that the two people caught
4 with the guns had the same explanation for why they had them.
5 I don't know that there is any other support for that
6 explanation, and the presence of robber's tools in the car
7 suggests otherwise.

8 THE COURT: Well, that may be what Judge Marrero was
9 thinking. I'm not sure because I don't have his transcript,
10 but I do have the presentence report and the submissions, which
11 do reflect at least a consistent story.

12 MS. KRAMER: To address your Honor's sort of core
13 issue here, I think the answer is that the overall guidelines
14 sentence would likely be less if the case were sentenced for
15 both offenses at the same time than if you're looking at 30
16 months plus 37 to 46, I think that's true.

17 THE COURT: Is that relevant to sentencing here?
18 You're arguing for a guidelines sentence, but it's not usually
19 the case that somebody is sentenced for conduct that predated a
20 subsequent conviction and sentence.

21 MS. KRAMER: That's true. It's an unusual set of
22 circumstances.

23 THE COURT: Right.

24 MS. KRAMER: I don't think -- I think it's relevant,
25 of course. It's not something that shouldn't be taken into

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1 account because it impacts the defendant's criminal history,
2 the Court's evaluation of his recidivism, and the fact that he
3 served time for that crime. But I don't think that it
4 justifies a below guidelines sentence in this case because of
5 the seriousness of the conduct here and because of the
6 defendant's recidivism, even taking out of the calculation the
7 guns, the other very serious crimes that he committed.

8 MR. CARNESI: If I could be heard briefly.

9 THE COURT: Sure.

10 MR. CARNESI: The circumstance surrounding that case
11 is that Mr. Maiorino had pled guilty to the guns, and he was
12 about to be sentenced. I think his sentence date was two weeks
13 prior -- sorry, two weeks past the date that this indictment
14 was filed. So again, as the Court raised the issue, logically
15 it would have been in his best interest to dispose of both
16 cases at the same time. He didn't have the opportunity to do
17 that because he was unaware this indictment was coming down at
18 the time that he was awaiting sentence on the other case, I
19 guess more significantly, at the time he pled on the other
20 case.

21 THE COURT: Wait a minute, the sentencing in this
22 case, in the Maiorino case, was September 16 of 2016.

23 MR. CARNESI: Yes.

24 THE COURT: So that was after the indictment came down
25 in this case.

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1 MR. CARNESI: That's correct, but that's my point,
2 Judge, he pled guilty, he was awaiting sentence, was a week or
3 two, whatever it was, away from sentence, and then he gets this
4 new indictment. Had the new indictment come down a month
5 earlier, in all likelihood he would have disposed of both cases
6 at the same time.

7 THE COURT: I don't know why that couldn't have been
8 done in August, he couldn't have said hey, I know we have a
9 sentencing, Judge, but let's put that off because we'll try to
10 wrap this up and get this all sentenced at once. I don't know
11 why that wasn't done. That would have, I think, been the
12 smarter way to go.

13 MR. CARNESI: Exactly, it would have been a much more
14 prudent way to go. And the resolution would have been -- and I
15 calculated this a while ago because I discussed this with
16 Ms. Kramer before we arrived at this disposition. I made the
17 same suggestion. It was rejected. But in calculating it,
18 although his guidelines for the combined cases obviously would
19 have been somewhat higher, the 30 months that he did in jail as
20 of that sentence would have counted.

21 THE COURT: I get that. I can tell you what the math
22 is.

23 Sorry to bore you people. This is sort of hyper
24 technical, but it does matter in a sense.

25 So the guidelines were -- offense level 19, criminal

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1 history category of two in front of Judge Marrero in September
2 of 2016, which was a month after an indictment had already come
3 down against Mr. Maiorino, that resulted in a guidelines range
4 of 33 to 41 months.

5 If -- and this is a big if, no guarantees at the time
6 that was it going to happen, but if Mr. Maiorino could have
7 pled globally in September before sentencing to this count and
8 that count, then it seems to me that what would have happened
9 is you would have had an offense level of 19 on the gun count,
10 an offense level of 17, which I calculated here. That's
11 assuming the same terms that were negotiated nine months later
12 with the government, including the logjam difference, but even
13 if you didn't give the logjam difference, it would have been
14 18. So what happened is through the grouping of the
15 guidelines, which is something that most people would never
16 even think about. And you folks here who are not lawyers, you
17 have a right to be sort of puzzled, but we would be at level
18 21.

19 The criminal history category at that point it seems
20 to me would be level three because he wouldn't have had a prior
21 conviction. For some reason, I think -- he was in criminal
22 history category two, according to the presentence report in
23 Judge Marrero's case, but it should have been three, I think,
24 because he committed that -- I guess actually that crime was
25 committed after he was off supervision.

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1 MR. CARNESI: Yes.

2 THE COURT: But in any event, if he pled and got
3 sentenced all together, he would be in criminal history
4 category three with an offense level of 21, which would be 46
5 to 57. That's my calculation.

6 Do you agree with that, Ms. Kramer?

7 MS. KRAMER: Yes, your Honor, with a couple of brief
8 caveats. Yes, if he got the same deal that was ultimately the
9 resolution of the case in May of 2017 when he entered a guilty
10 plea, which had him pleading not to a racketeering count but
11 just to the extortion.

12 THE COURT: There are things that could have been
13 higher, I agree with that.

14 MS. KRAMER: Right. So I think to some extent the
15 fact that he had a higher criminal history by virtue of the
16 other case, that he had already pled guilty to that case, and
17 that this plea resulted from negotiations following the
18 defendant's review of all the discovery and a lot of
19 communications back and forth, I don't think that the terms
20 would have been the same if at that time he had said let's wrap
21 it up.

22 Putting that aside, though, yes, that calculation is
23 correct, your Honor. But I also think that it's important to
24 consider the fact that at the time the defendant was indicted
25 in this case, having pled guilty in that felon in possession

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1 case, there was not, as your Honor can see from the transcript
2 and the chronology, an immediate acceptance of responsibility
3 and guilty plea in this case. That happened --

4 THE COURT: But enough to qualify for the points under
5 the guidelines.

6 Here's my point, if I were representing him, it seems
7 to me -- I'm not faulting anybody or saying there was
8 ineffective assistance, but it seems to me if I were
9 representing Mr. Maiorino in the gun case before Judge Marrero,
10 I got an indictment a month before sentencing, I would have put
11 off sentencing and asked Judge Marrero to keep putting off
12 sentencing until I resolved the other case, because it would
13 always be better to be sentenced at the same time because you
14 would get credit for time you're in.

15 MS. KRAMER: Correct, your Honor. I don't remember
16 what the exact sequence of events was, but that was something
17 that Mr. Carnesi proposed at some point with the government,
18 and we did not agree with that request.

19 THE COURT: With respect to the case in front of Judge
20 Marrero?

21 MS. KRAMER: Yes.

22 THE COURT: Is that right, Mr. Carnesi?

23 MR. CARNESI: Yes, your Honor.

24 THE COURT: So back in August or September you were
25 arguing that the government should allow Mr. Maiorino to defer

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1 sentencing in the case before Judge Marrero?

2 MR. CARNESI: No, Judge, I didn't represent
3 Mr. Maiorino in front of Judge Marrero. My suggestion was in I
4 guess probably the weeks before we ultimately arrived at this
5 plea agreement was that somehow it would be considered that
6 way.

7 THE COURT: So your point, Ms. Kramer, is that this
8 plea agreement reflects a determination that the grand total of
9 time will be the combined sentences. Is that what you're
10 saying?

11 MS. KRAMER: Yes, your Honor. And I think there was
12 some request on the part of the defendant in the other case to
13 delay things, I just don't know exactly when that happened, but
14 that may have been just informal communications with the U.S.
15 Attorney's Office.

16 But they are separate cases, and to the extent that --

17 THE COURT: When did the indictment come down again,
18 early August?

19 MS. KRAMER: August 2nd, I believe, your Honor, 2016.

20 The resolution in this case reflects, to some extent,
21 an acknowledgment there was a separate conviction and sentence
22 imposed by Judge Marrero. In addition, I don't know that at
23 the time of the sentencing in the trigger lock case there was a
24 clear sense of how things would play out for the defendant in
25 this case, and so it's not necessarily true --

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1 THE COURT: But I'm not supposed to be sentencing him
2 on sort of his gambling ability, his ability to sense whether
3 he's better or worse off, I'm supposed to be sentencing him on
4 the crimes.

5 So if what you're saying is the plea you arrived at
6 was based -- we'll let him plead to just the extortion and not
7 a racketeering and a lower guidelines range as a result because
8 we have already baked in the fact that he served 30 months
9 already and wouldn't get credit for it; if you're telling me
10 that, that's one thing. But if you're saying hey, he blew it,
11 he miscalculated, then I think there's a different equitable
12 calculus.

13 MS. KRAMER: It is the first, and to a certain
14 extent --

15 THE COURT: What would -- nobody pled -- virtually
16 nobody pled to racketeering in this case, right?

17 MS. KRAMER: That's correct, your Honor. That
18 certainly was not the prevailing factor.

19 THE COURT: What were the guidelines -- how would the
20 guidelines have been worse than what they ended up being in
21 this case?

22 MS. KRAMER: So the base RICO guideline would be 19 --
23 sorry, I will have to check, your Honor, to give you accurate
24 answers, because I don't have the notes from --

25 THE COURT: You're saying if he pled to RICO it would

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1 be worse, right?

2 MS. KRAMER: Yes. I don't want to suggest in any way
3 that but for his conviction and sentence before Judge Marrero
4 we would have said to him you must plead to a RICO count,
5 because that's not, as your Honor observes, what anybody did
6 who pled guilty by the deadline in May of 2017 that was the
7 product of extensive negotiations. But it did factor in -- the
8 defendant was named in sort of different aspects of the
9 conspiracy, not only the extortion with respect to Mr. Julio,
10 but the -- he ended up with a guilty plea to a single count of
11 extortion, and one of the factors --

12 THE COURT: I'm trying to figure out would his
13 guidelines have been significantly higher than what they are in
14 this case. If he pled to racketeering, it would be a base
15 offense level of 19 or the offense applicable to the underlying
16 racketeering activity, which would be extortion. Was there
17 other underlying activity that was more serious than extortion,
18 or more serious than racketeering?

19 MS. KRAMER: No, your Honor.

20 THE COURT: So then it seems to me the offense level
21 would have been 19 under racketeering, which nobody pled to,
22 but if he had, that wouldn't affect the combined guidelines I
23 talked about because he was 19 under the guns and he's 19 here.

24 So I think that's right. I think it would have
25 resulted in getting credit for the time in for both. I'm not

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1 trying to necessarily make this easy on Mr. Maiorino, I'm
2 trying to play this straight.

3 MS. KRAMER: Understood completely, your Honor. It's
4 a little bit hard to speculate what could have been, but it
5 could have been a single plea to a RICO, which would have, as
6 your Honor pointed out, not affected the combined total,
7 because the difference --

8 THE COURT: Let me make sure that's the case.

9 I'm sorry to all you people. Generally sentencings
10 are not quite this technical. This feels like an accounting
11 convention. But it is important. If we're starting here as
12 opposed to here, that makes a huge difference in a case like
13 this one. So that's why we're spending the time doing it. And
14 I think Mr. Carnesi and Mr. Maiorino I think understand this.
15 Some of you may grasp that we're not just sort of doing this
16 for the heck of it. But if you're not following, I apologize.
17 But it can be technical, and it's the kind of thing if you
18 don't really know the sentencing guidelines well it's not
19 likely that you will be able to follow the nuances of these
20 arguments, and that's just the nature of having a guidelines
21 system.

22 So here's the deal, it would have been level 20 for
23 the gun, plus two because one of the firearms was stolen, level
24 22.

25 MS. KRAMER: Apologies, your Honor, I thought you said

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1 it was offense level 19.

2 THE COURT: That's what it was after sentence. I want
3 it make sure understand this now. That's what it was in front
4 of Marrero, 20 plus two, and then if it had been racketeering
5 it would have been 19, which then would have been an extra two
6 points.

7 MS. KRAMER: Still one to four levels less.

8 THE COURT: 24. It would have been 20 plus two, plus
9 the two that you got under the grouping analysis, plus the two
10 under the gun count, minus three for acceptance. 24 minus
11 three is level 21. At that point he still would have been in
12 criminal category three, so 46 to 57.

13 MS. KRAMER: You added the plus two because the
14 offense involved the express or implied threat of death or
15 bodily injury --

16 THE COURT: No, I'm saying that -- well, it's going to
17 be plus --

18 Hold on.

19 MS. KRAMER: Before acceptance in this case, your
20 Honor --

21 THE COURT: Before acceptance in this case we were at
22 21.

23 MS. KRAMER: Right.

24 THE COURT: And before acceptance in that case we were
25 at 22. So he's going to be -- take 22, which is the higher of

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1 the two, and add two levels, right?

2 MS. KRAMER: Right.

3 THE COURT: One unit for each of the two counts, so
4 that puts him at 24. 24 minus three for acceptance, no
5 question he gets three for acceptance, that puts him at 21.
6 Forget the extra point, that's off, it seems to me, because of
7 the gun conviction, the gun charge.

8 But that's level 21, criminal history category three
9 is 46 to 57, right? With credit for the time in on both,
10 that's what it would be.

11 MS. KRAMER: Yes, your Honor.

12 THE COURT: It's hard for me to see how he would have
13 done any worse in a plea agreement arrangement.

14 MS. KRAMER: I don't think that in a plea he would
15 have had to plead to additional counts. At a trial there would
16 perhaps be RICO conspiracy, RICO substantive, substantive
17 extortion, right?

18 THE COURT: I don't know if they would affect his
19 guidelines.

20 MS. KRAMER: No, I think -- they may not have. In the
21 grouping analysis you could end up with potentially one more
22 point for an additional count.

23 THE COURT: But the extortion is the same -- I'm not
24 sure what -- the same conduct underlying each conviction, I
25 think they would not be grouped separately.

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1 MS. KRAMER: In any event, I want to raise the
2 multiple count option and say that I don't think that even in a
3 plea that was to RICO he would have also had to plea to
4 substantive. So I don't think that's an issue, but I want to
5 sort of make sure the record is clear that there would have
6 been multiple counts going into the trial. So there's a
7 possibility that a plea at that early stage where what the
8 defendant is saying is let me plead to this now so I could get
9 sentenced on both of my different cases at the same time,
10 there's some possibility that there would have been an
11 additional count. It would not have been more serious, offense
12 level-wise, than the RICO. And so as a result, you could
13 potentially have one additional count that is equally serious
14 that results in one more point for the grouping that would, at
15 worst, take him to an offense level of 22 instead of 21 after
16 acceptance, which would be 51 to 63.

17 So I think look, if you're gaming out what could have
18 happened, I think that is not an unrealistic possibility.

19 THE COURT: I'm not sure that I would agree there
20 would be the extra point, but in any event, we have a range
21 that we can say I think comfortably is what would have been the
22 range had these cases been resolved together, which they
23 weren't, and which I don't think counsel asked for. He asked
24 for a brief adjournment after the indictment came down and then
25 they went forward with sentencing. I haven't noticed in here

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1 that Judge Marrero said come hell or high water we're going
2 forward with sentencing. I think everybody said let's go
3 forward with sentencing now. I think that was not a wise move.

4 Was Mr. Maiorino in custody prior to this sentencing?
5 He was, right?

6 MR. CARNESI: Yes.

7 THE COURT: It's unusual that I have two cases that
8 touch on each other like this. It's not a typical situation.
9 They asked for an adjournment, he gave it, and then went
10 forward with sentencing a month later. So I don't think there
11 were any further requests for adjournments, and perhaps it
12 would have been wise do that.

13 All right. That helps me. In light of all that,
14 Mr. Carnesi, is there anything that you want to say?

15 MR. CARNESI: No, your Honor.

16 THE COURT: Okay. Mr. Maiorino, as I said, you have a
17 right to address the Court, and you are welcome to but you're
18 not required to. You wrote me a very thoughtful and lengthy
19 letter, so you may want to rest on that. Whatever you think.

20 THE DEFENDANT: I would like to address your Honor
21 shortly.

22 THE COURT: Okay. Stay seated. I think it's easier
23 to speak into the mike. Keep your voice up nice and loud.

24 THE DEFENDANT: Thanks for giving me the opportunity,
25 your Honor --

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1 THE COURT: You don't have to thank me, because even
2 if I didn't want to, I would have to.

3 THE DEFENDANT: But I want to thank you for the bail,
4 because what I did was be able to --

5 THE COURT: That you should thank me for.

6 THE DEFENDANT: Big time.

7 THE COURT: Ms. Kramer gave me a really hard time
8 about that.

9 THE DEFENDANT: Big time, because I didn't realize how
10 severe it was. And we're pretty much under the way of
11 addressing most of those problems, but also by granting me the
12 bail --

13 THE COURT: What's that?

14 THE DEFENDANT: By granting me that bail you allowed
15 me to spend some time with my wife and my daughter. That
16 enabled me to see how much I hurt them by my actions. I'm
17 sorry for that. I take full responsibility for that. I will
18 never put them in harm's way ever again.

19 As you mentioned, I wrote you a detailed letter of my
20 life. I did commit some bad in my life, your Honor. I did.

21 THE COURT: You did.

22 THE DEFENDANT: And I paid for it. But I tried to do
23 good, a lot of good to try to rectify my past.

24 There are things I could go into that you spoke about,
25 and I think it's well addressed in regards to my history,

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1 particularly the gun case. It is true, I tried to help that
2 boy. And again, I hurt my own family because of that.

3 I cherish my family, your Honor. But if you notice,
4 maybe you don't, my daughter is not here today. I asked her
5 not to be here --

6 THE COURT: I understand that. Look, I think --

7 THE DEFENDANT: -- because I'm ashamed.

8 THE COURT: -- it's a traumatic thing for a young lady
9 to sit through something like that.

10 THE DEFENDANT: I'm ashamed of my actions, and I don't
11 want her to see me standing in front of you for my crime.
12 That's not the person that I think I am. I have done some
13 stuff, but I have done other things as well.

14 I pray for the opportunity to be able to rejoin my
15 family as soon as possible, whatever you think fit, to be the
16 parent that I know I can be, the husband that I know I am, and
17 just go back to living a normal life.

18 Again, your Honor, I take full responsibility. I
19 don't shirk that at all. I made bad judgments with regards to
20 this case at hand. My words were atrocious, but they were
21 words. Nobody got hurt.

22 THE COURT: Well, they were pretty atrocious.

23 THE DEFENDANT: They are. I admit them.

24 THE COURT: And they were uttered by a guy who had
25 previously killed a man.

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1 THE DEFENDANT: I know, I know.

2 THE COURT: You could say it was just tough talk, but
3 it takes a different -- it takes on a different light
4 altogether when being uttered by a guy who has killed another
5 human being and spent 20 years in jail for it. How could you
6 have thought it was okay to talk that way? How could you have
7 put yourself in a situation where you knew you were going to be
8 involved in something like that? That staggers my mind.

9 THE DEFENDANT: Unfortunately, the timing in my life
10 at that time was poor. I was going through some changes. I
11 played a role when I was approached. I was a fool. It was
12 very unwise. And because of that, I know I'm going to have to
13 pay here today.

14 But I guarantee you and I promise you here and now:
15 I'm done. I am 58 years old. I got a 17-year-old daughter
16 about to embark in college. I have been involved in every
17 aspect of her life. My wife had been with me since I was 15.
18 I let them down. I just want to get back, put this behind me,
19 pay what I need to pay, and move on. You will never see me in
20 these courts, I promise you here and now, ever again.

21 That's all I have to say. Thank you.

22 THE COURT: All right. It's almost 11:30.

23 Did you want to say something, Ms. Kramer?

24 MS. KRAMER: Yes, your Honor, I want to very briefly,
25 for the record, respond on the issue of whether the defendant's

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1 counsel in the trigger lock case should have asked to adjourn
2 things and do it one sentencing together. And I know your
3 Honor made very clear that you're not suggesting that anyone
4 was ineffective in that respect, but I just want to make clear
5 a couple of reasons in addition to what your Honor has said as
6 to why it's not clear that that was not a smart strategic
7 decision.

8 THE COURT: Okay.

9 MS. KRAMER: First, I think it was unclear to all of
10 the parties and would have been unclear if the cases were
11 sentenced together which judge would be doing the sentencing of
12 both, and obviously that's a factor that defense counsel takes
13 into account in making those decisions.

14 Second, Judge Marrero did give the defendant a below
15 guidelines sentence in that case.

16 THE COURT: By three months, yes.

17 MS. KRAMER: And your Honor has demonstrated obviously
18 a very careful calculation of what the guidelines would have
19 been had the cases been together, and clearly has taken into
20 account that sentence and the different effect it has not only
21 in how much time the defendant has served, but in what his
22 current guidelines calculation is because of the fact it
23 elevated his criminal history to criminal history category
24 four.

25 THE COURT: Right.

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1 MS. KRAMER: And lastly, the government did take into
2 account in negotiating the resolution in this case the fact
3 that the defendant was serving time in connection with the
4 Judge Marrero case which postdated this conduct.

5 THE COURT: You say that, but I'm not sure how it
6 would have made any difference. You say you took that into
7 account, but how would the guidelines have been higher had he
8 not been serving?

9 In other words, if he was like most of other
10 defendants here, you picked him up off the street and he was
11 looking at only these charges, how would the plea offer have
12 been different than what it ended up being, besides the one
13 level logjam reduction?

14 MS. KRAMER: So I think, your Honor, the number of
15 counts that the defendant would have been asked to plead guilty
16 to may have been different, as your Honor has seen with some of
17 the defendants in the case.

18 THE COURT: Nobody pled to racketeering that I can
19 think of at all.

20 MS. KRAMER: That's true, your Honor, but there would
21 have been, in this offense calculation, an additional point for
22 two counts, even if equal or lower value than one to four
23 offense levels.

24 THE COURT: Gambling, you mean, or what? What other
25 conduct would you have charged?

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1 There's gambling machines that were proposed to be put
2 into the bar, so maybe gambling, but that's an offense level of
3 twelve. So that's -- I don't think that would count, that's
4 more than nine levels than where we were otherwise.

5 Anyway --

6 MS. KRAMER: I'm reluctant to go beyond the offense
7 conduct relevant to what the defendant has guilty to because
8 that is the count he pled guilty to. There were some other
9 references in the indictment to his at the very least being
10 present when other crimes were discussed and potentially
11 another extortion, that kind of thing where there could have
12 been another count.

13 So I'm not suggesting, your Honor, that the government
14 said look, he's serving 30 months, let's fashion a resolution
15 in this case that reduces his sentence in this case by 30
16 months or takes away the criminal history leap, but merely that
17 one additional component in looking at whether the way that
18 things were handled in terms of having two sentences was a
19 smart strategic move is that it did, to some extent, impact the
20 government's resolution in this case.

21 THE COURT: That's still not clear to me, but I don't
22 know that I want to get into it too much.

23 MS. KRAMER: Fair enough. Taking away that factor and
24 discounting it completely, there are a lot of other strategic
25 reasons that I think support the notion that many highly

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1 effective defense counsel would have proceeded to have two
2 separate sentencings, as was done here.

3 THE COURT: I'm not suggesting that -- it was
4 Mr. Hammock who was lawyer in the first case. I'm not saying
5 he was ineffective. I don't think it fell below the objective
6 standard of reasonableness for a lawyer in the profession, nor
7 would I say it would have any prejudice. It may not have had
8 any prejudice at all. And it's not clear to me that Judge
9 Marrero would have granted the request to adjourn indefinitely.

10 So I don't know. I think it's a factor that I can
11 consider and I will consider. And so what I would like to do
12 now, at the risk of really pushing everybody's patience to the
13 limit, is take a few minutes to reflect on what I heard. I
14 have been thinking about this case for a long time, as I'm sure
15 has Mr. Maiorino, as I'm sure you have.

16 I got up this morning with a sense of what I would do
17 in this case, because I can't be unprepared or come in
18 oblivious or with nothing in mind, but I always want to be open
19 to hearing things and open to being persuaded, including by
20 statements by the defendant and by counsel. So I want to take
21 a few minutes to collect my thoughts, to think about what I
22 heard today, to reflect a little on this hyper technical
23 guidelines discussion that we have been having, because it is
24 relevant. This is not a typical case the way these things go,
25 but it won't be more than a few minutes.

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1 If you don't mind coming back or taking a quick break,
2 excuse me for five or ten minutes. I only get to do this once,
3 and I want to make sure that I do it carefully and correctly.

4 Thanks.

5 (Recess taken)

6 THE COURT: Thanks for your patience.

7 This is an important day for Mr. Maiorino, it's an
8 important day for you folks. I understand that. It's not lost
9 on me that any sentence that I impose on Mr. Maiorino is going
10 affect other people, too, no one more than his daughter and his
11 wife, but lots of people. That's just the nature of being
12 human, we're connected to each other, and what happens to one
13 person affects others, even others who are innocent.

14 So I view Mr. Maiorino's wife and his daughter and all
15 of you in many ways to be innocent victims of this crime
16 because you are suffering from it, but sadly that is often the
17 case. It's usually the case. It's not that unusual that
18 people who are being sentenced, people who committed serious
19 crimes, when they are punishment, that punishment will be felt
20 by other people who did nothing wrong. And I wish there was
21 something I could do to alleviate that, but sadly that's the
22 reality of being human.

23 This is a case where there is some really serious
24 conduct, no question about that. I mean I read a little bit
25 from the transcript to just let people know what we're talking

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1 about here. Many of the letters describe Mr. Maiorino as a
2 stand up guy, somebody who shows up with a shovel when it's
3 snowing for elderly neighbors. That's an admirable thing,
4 somebody who is there for his daughter, somebody who is there
5 for friends and family members, somebody who is lively and hard
6 working, who has a job ready for him, somebody who has always
7 treated me with respect every time we've been in court. Those
8 are admirable questions. No question about that. No question
9 about that. There's more to this man than his crime or his
10 criminal history. That's not unusual either. Everybody I
11 sentence is human, and human beings have capacity for great
12 kindness and great generosity, but also at the same time in the
13 same person often the capacities for more violence and more
14 destructive conduct, and so that's what was going on here, too.

15 So at the same time that Mr. Maiorino was being a good
16 worker and a good father and a good neighbor, he was also
17 talking with other people about extorting a guy who owed him
18 money. Did the guy owe him money? Sounds like it. I have no
19 reason to think he didn't. Sounds like the guy walked off with
20 the money for a project that he didn't finish, and for that he
21 should have been sued, and for that he should have taken a
22 reputational hit and he should have done what he needed to do
23 to make sure that he followed through on his contract. But you
24 don't get to threaten him, you don't get to fuck him up, you
25 don't get to stun gun him or nail his jaw, you don't get to

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1 force him to put gambling machines into his restaurant, you
2 don't get to do that. You don't. And you don't get to unleash
3 guys like the ones you were talking to to do that, even if it's
4 just to scare him a little. You don't get to do that. That's
5 not what happens in a civil society. And you don't get to do
6 that when you've got a prior conviction for a murder.

7 You, better than anybody, should have known you don't
8 even get to talk tough. You don't even get to talk like that
9 when you've got the record that you have and when you've done
10 what you did. And I think you're a guy who is really mindful
11 of that. I'm not here to wag my finger and lecture you. I
12 have to give my reasons. A judge in federal court has to
13 explain himself. They have to give reasons for the sentence.
14 And that's because I have a such discretion. I have a wide
15 range of sentences to impose, and so I have to justify it and
16 explain it. That's the purpose, not to lecture or blather. In
17 some ways I think you would like me to say a number and be
18 done, but I have to make a record for the public and for your
19 benefit.

20 So come on, you understand what you did. You're sorry
21 for what you did. You say a day doesn't go by where you don't
22 think about what you did as a 19 year old, but you certainly
23 weren't thinking about that when you were having these
24 conversations about getting back your money and doing what was
25 necessary to get it. You were talking like a tough guy,

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1 talking like you were on the Sopranos. Maybe it was an act,
2 maybe it was a bluff, maybe everybody decides when they get
3 together they become a cartoon. I don't know. I think there's
4 some of that going on in this case. I think there's some
5 strange compulsion people have to act the gangster when they
6 all get together. And some of these folks are real gangsters,
7 no question about that. But you knew better than this, and you
8 should have known better than this.

9 You have to be punished. No question about that. And
10 I'm not suggesting you don't think that. You said all along
11 you acknowledge you need to be punished. For me, the issue is
12 how much. How do I balance those things out? So we spent a
13 lot of time talking about the guidelines, because it does seem
14 to me the guidelines are supposed to be a starting point. The
15 guidelines are supposed to give guidance. They're not a magic
16 cure. They're not a substitute for human judges. They're not
17 capable of assessing and weighing all the different nuances
18 that are part of this process. I don't think we'll ever get to
19 that point. But they're available.

20 And so I spent a fair amount of time looking at these
21 guidelines and thinking about what these guidelines would have
22 been because this is a case where I have got two sentences, one
23 that was imposed a month after the time in this case, and one
24 that is going to be imposed today for conduct that predated the
25 conduct in that other case, which is also unusual.

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1 It seems to me, and I think that the precedent and
2 even the guidelines acknowledge that where, through the fault
3 of no one, I'm not faulting the government, I'm not faulting
4 defense counsel in the other case, I'm not faulting -- I'm not
5 faulting defense counsel in this case, I'm not -- there were
6 reasons beyond the control of any one person to why this case
7 that stems from a period 2012 to 2013 and for some defendants
8 into 2014, in other words, a time period that predated the gun
9 offense before Judge Marrero, there are reasons why it got
10 prosecuted this way and charged this way. I'm not faulting
11 anybody.

12 But it does seem to me that, generally speaking, a
13 defendant should not be worse off because of those charging
14 decisions and because of the timing of prosecution. I think,
15 generally speaking, a court should consider and consider
16 carefully what the sentencing range would have been had the
17 matters been prosecuted at the same time, especially when they
18 really were in the courthouse at the same time.

19 So that's why we spent a lot of time going back and
20 forth on this. It's in some ways impossible to sort of
21 recreate the scene as it existed on September 16 of 2016. As I
22 said, I'm not faulting anybody, but it does seem to me that --
23 I think it's fair that the guidelines then, or if sentencing
24 had been put off until now for both cases, or if the cases had
25 been charged at the same time, which I suppose they could have

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1 been, theoretically, that the guidelines today would have been
2 different. The guidelines would have been, as I said, a
3 combined total offense level of 21, a criminal history category
4 of three, which would have been 46 to 57 months, and it seems
5 to me that that would have taken into account time served, and
6 that would be an appropriate sentence in light of all those
7 things. Even if a gambling charge had been added -- and I
8 think that the gambling machines being introduced into the bar
9 could constitute attempted gambling, perhaps, maybe, but that
10 wouldn't have affected the guidelines, which would have been
11 level twelve, ten levels below the highest guideline count.

12 So I'm getting back into math, but I think the reality
13 is that's what the range would have been, and I would have been
14 comfortable sentencing within that range; probably not at the
15 low end given the history, given the criminal history, given
16 the fact that he committed murder, and you don't get second and
17 third bites at the apple with that.

18 So it seems to me that within that range, on these
19 facts, all the facts that are available to me now, including
20 everything before Judge Marrero, I would have sentenced sort of
21 in the middle of thing range, middle to bottom of the range,
22 and so I think I would have sentenced him probably about 50
23 months. And so that's the sentence I will effectively impose
24 here, minus the time you served.

25 So that means I will be imposing a he sentence of 20

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1 months. I will give you time to surrender. I think we started
2 this process with the dental work. You've been compliant with
3 all of your conditions. You're going to continue to abide by
4 those conditions. But it seems to me that I am giving a
5 variance here only to reflect what the sentence would have been
6 had everything been charged together, which I think is not
7 irrational, I think that's fair and appropriate.

8 So that's the sentence I intend to impose. I also
9 intend to impose a term of supervised release of three years.
10 That term of supervised release will include conditions that
11 are set forth in the presentence report. I won't announce them
12 now, I will when I formally impose sentence.

13 I'm not going to impose a fine. I will order
14 forfeiture in the amount of \$10,000. That's already been
15 ordered, so I'm formalizing as part of the judgment what has
16 already been ordered, and a \$100 special assessment. So that
17 is the sentence I intend to impose. Is there any legal
18 impediment to my imposing that sentence, Ms. Kramer?

19 MS. KRAMER: No, there's not. Your Honor may need to
20 make clear for the record that the three years of supervised
21 release I believe has to run concurrent.

22 THE COURT: That's right. So it would be concurrent
23 to the undischarged term of supervised release that you're
24 technically on now for the gun offense. So it will be three
25 years starting today. I guess ultimately it will be three

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1 years. Between the two it will be a little more than three
2 years, because you have technically been on supervised release
3 since you got released back in -- when was it, August you got
4 released?

5 THE DEFENDANT: Yes.

6 THE COURT: So yeah, that will be part of the
7 sentence.

8 Is there any legal impediment to my imposing the
9 sentence, Mr. Carnesi?

10 MR. CARNESI: No, your Honor.

11 THE COURT: Let me ask you to stand.

12 Mr. Maiorino, having accepted your guilty plea back on
13 May 17, having adjudged you guilty then, having carefully
14 considered all the angles here, I don't think anyone could
15 accuse me of being a slacker on this one, I'm going sentence
16 you to 20 months. I will give you time to surrender, I will
17 say April -- right after Easter, I think April 3rd.

18 If there's a need for an extra week or something, I
19 may be open to that, but we're not putting this off for months?

20 THE DEFENDANT: I want to get it done.

21 THE COURT: As you said in your letter, it's good, but
22 it also means that it will be longer once you go in before you
23 get home. I will give you until April 3rd to surrender.

24 I'm also going to impose a term of supervised release
25 of three years. As I said, that term will include the

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1 following standard, mandatory and special conditions. There
2 are 13 standard conditions imposed in every case, I'm going to
3 impose those here.

4 There are mandatory conditions that you not commit
5 another federal, state or local crime. If you commit another
6 crime while you are on supervised release with me, I will crush
7 you. I swear to God I will. I mean it. I will view that as
8 such a breach of faith and trust that I will sentence you to
9 the maximum in a heartbeat. So I don't say that to be tough
10 and to posture, I'm saying that just so you understand there
11 will be no further crimes, period.

12 You are not to possess a firearm. Of course you know
13 that already. That's a crime. It's also a violation of
14 supervised release. You get double whacked if you get
15 prosecuted and sentenced for that. You will also get violated
16 here and do three years on this consecutive to whatever you get
17 on that, and you will be an old man by the time you get out.

18 You're not allowed to possess drugs of any kind, any
19 kind of illegal substance. That includes marijuana, that
20 includes other illicit drugs. It also includes prescription
21 drugs for which you don't have a prescription. So you may not
22 possess anything like that or use any kind of prescription
23 drugs.

24 You are to cooperate in the collection of DNA as
25 directed by the probation officer. You will also have special

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1 conditions, those conditions include that you will not incur
2 any credit charges or open lines of credit, that means
3 mortgages, credit card accounts, bank loans, anything like
4 that, without the permission of the probation officer.

5 You will also provide any requested financial
6 information to the probation officer. So you have to make sure
7 that you're giving complete and accurate information to
8 probation just to make sure you don't get over your head
9 financially so you don't get put into a situation where you are
10 attempting to engage in criminal conduct. It's for your own
11 safety.

12 You must submit your person, your residence, your
13 place of business, your vehicle, any other premises you
14 control, as well as your smartphone if you have one or your
15 tablet or laptop. All of those things are subject to a search
16 in the event the probation officer thinks there may be evidence
17 of a crime or evidence of a violation of supervised release.
18 You can't decline. You can't say no, I won't let you come in,
19 you have to allow it.

20 You have an obligation to advise any adults with whom
21 you share these premises of this condition. So your wife is
22 here, she understands what we're talking about. Any other
23 adults with whom you share the premises, you have to let them
24 know that their stuff, to the extent it is commingled with
25 yours, could also be searched. And so they need to know that

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1 so they can take steps to protect their own property and to
2 protect their own privacy. Okay?

3 THE DEFENDANT: Yes.

4 THE COURT: That's on you.

5 You are not to associate in person, through the mail,
6 through email, telephone, texting, any means of communications,
7 you may not be in touch with or associating with anybody who is
8 affiliated with an organize crime enterprise or a gambling
9 enterprise or any other groups that are engaged in criminal
10 activity. That's a condition, you can't be hanging out with
11 these guys, ever. If you did, that's a violation. Just
12 hanging out, just going bowling with one of these guys is
13 enough to be a violation and you will be back in front of me
14 and I will be pissed, so don't do that. All right?

15 You will be supervised -- you live in Westchester, so
16 you will supervised -- is White Plains easier or Manhattan?

17 THE DEFENDANT: White Plains, your Honor.

18 THE COURT: So you will be supervised out of White
19 Plains. So you will report to that same courthouse. You will
20 be with probation up in White Plains.

21 As I said, I'm not going to impose a fine. I am going
22 to order a \$100 special assessment that's mandatory, you have
23 to pay that, as well as a \$10,000 forfeiture of the proceeds of
24 this crime, which is already part of the judgment, the
25 forfeiture order in this case that's been docketed, but it's

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1 now part of the judgment on the sentencing, and that's for
2 substitute assets, assets that were the proceeds of this crime
3 but which are now dissipated. So you have to come up with that
4 money somehow. You have to pay it over time, and you do have
5 to pay it. I will get notice every time you pay, and that
6 means every month I expect to see something from you to show
7 that you're not blowing me off. Okay?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. There are open counts?

10 MS. KRAMER: Yes, your Honor. The government moves to
11 dismiss the open count in the underlying indictment.

12 THE COURT: All right. So I will dismiss the open
13 counts. And I should advise you you have the right to appeal
14 this sentence, to the extent you haven't already waived that
15 right. I think you have. You agreed that you would not appeal
16 any sentence that was 46 months or below. I sentenced you to
17 20. And it's not -- I mean I didn't do it because I'm pitying
18 you, I'm doing it because I think that's the fair sentence for
19 the reasons I stated, including the fact you had this other
20 undischarged sentence. But I think, as a result, you have
21 given up your right to appeal, you can't appeal this sentence
22 or otherwise challenge it. If, however, you think you have a
23 legitimate basis for appeal, you need to file a notice of
24 appeal within two weeks. Mr. Carnesi will help you with that,
25 but I think you probably waived that right.

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1 As I said, I will let you surrender on April 3rd to
2 the facility that will be designated by the Bureau of Prisons.
3 In the meantime, continue to comply with all the conditions of
4 bail. If you were to violate any of them, I will not hesitate
5 to put you in right away.

6 Is there anything else that we should cover today?
7 Anything else that I overlooked?

8 MS. KRAMER: No, your Honor.

9 MR. CARNESI: Judge, just one other thing, if the
10 Court would recommend a designation to the facility in Danbury,
11 that would be enable him to keep close contact with his wife
12 and daughter.

13 THE COURT: All right. I don't mind making that
14 recommendation. My only hesitation is that everybody in this
15 case is asking me to recommend Danbury, but that's fine, it's
16 close, it makes it easy to visit, but it means you could be in
17 the same place with a lot of these other guys, and I don't want
18 you hanging with these guys.

19 THE DEFENDANT: I'm done.

20 THE COURT: It's a little beyond your control in a
21 prison setting. At home you could get in your car and drive
22 away, you could close the door and not pick up the phone. In
23 jail it's a little trickier. I don't want you hanging with
24 these guys in jail. So go to the library, stay away, but I
25 will recommend Danbury.

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1 MR. CARNESI: Thank you, your Honor.

2 THE COURT: But nothing about mental health treatment,
3 drug treatment, anything like that? Probation didn't recommend
4 it, I want to make sure the parties have a chance to be heard
5 on that.

6 MR. CARNESI: No, your Honor.

7 THE COURT: All right. So I don't know if that's good
8 news or bad news for you. I explained my reasons. I think
9 this is a fair sentence. There are times when people leave
10 very upset and think it was a harsh sentence, and other times
11 where they think wow, I thought he was going to come in a lot
12 higher than that. I can't worry about that, I have to do the
13 best I can.

14 I do think that you have many admirable qualities,
15 Mr. Maiorino. It's disturbing to me that you're now a
16 three-time convicted felon. You got to make sure that you are
17 able to follow through on your better instincts, because you
18 have them, and you are capable of executing them. You're
19 capable of holding a job and being a good father and a good
20 husband and being a good neighbor. You're capable of those
21 things. I can't understanding why a guy with that kind of
22 knowledge and that kind of ability is nonetheless still sort of
23 circling back into situations that put you and your family at
24 risk. You just can't do it.

25 So use the time wisely. Good luck to you and your

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1 family. You have a daughter who sounds like a jewel who is
2 just a great kid that any father would be proud of. So look,
3 you have a whole group of people here. I sentence people in
4 empty rooms all the time. So in many ways you are incredibly
5 blessed, and it gives me some confidence that you won't slide
6 back into criminal history because these folks will hopefully
7 prevent you from doing that. But for most people, having a
8 teenage daughter is enough to keep them out of any kind of
9 criminal situation because the threat of separation is enough
10 to deter criminal conduct.

11 So you don't need more motivation to do it, you don't
12 need threats from me, you've got all the reasons you need to to
13 make your life productive. So at this point you have got a lot
14 to look back on and say wow, I'm not proud of that. Hopefully
15 for the rest of your life you could say well, I was proud of
16 what I did for the remainder, for the balance. That's my hope
17 for you. So good luck. Good luck, everyone, have a good day.

18 MR. CARNESI: Thank you, your Honor.

19 THE COURT: Thank you, everyone. Thank you for your
20 patience. Let me thank the court reporter as well.

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